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Part 1

NATIONAL AMERICAN INDIAN MUSEUM ACT

NOVEMBER 9, 1989.—Ordered to be printed

Mr. ANDERSON, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 2668 which on June 15, 1989, was referred jointly to the Committee on House Administration, the Committee on Public Works and Transportation, and the Committee on Interior and Insular Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 2668) to authorize the establishment with the Smithsonian Institution of the National Museum of the American Indian, to establish a memorial to the American Indian, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu there of the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Museum of the American Indian Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) there is no national museum devoted exclusively to the history and art of cultures indigenous to the Americas;

(2) although the Smithsonian Institution sponsors extensive Native American programs, none of its 19 museums, galleries, and major research facilities is devoted exclusively to Native American history and art;

(3) the Heye Museum in New York, New York, one of the largest Native American collections in the world, has more than 1,000,000 art objects and artifacts and a library of 40,000 volumes relating to the archaeology, ethnology, and history of Native American peoples;

(5) the Heye Museum is housed in facilities with a total area of 90,000 square feet, but requires a minimum of 400,000 square feet for exhibition, storage, and scholarly research;

(6) the bringing together of the Heye Museum collection and the Native American collection of the Smithsonian Institution would—

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(A) create a national institution with unrivaled capability for exhibition and research;

(B) give all Americans the opportunity to learn of the cultural legacy, historic grandeur, and contemporary culture of Native Americans;

(C) provide facilities for scholarly meetings and the performing arts;

(D) make available curatorial and other learning opportunities for Indians; and

(E) make possible traveling exhibitions to communities throughout the Nation;

(7) by order of the Surgeon General of the Army, approximately 4,000 Indian human remains from battlefields and burial sites were sent to the Army Medical Museum and were later transferred to the Smithsonian Institution;

(8) through archaeological excavations, individual donations, and museum donations, the Smithsonian Institution has acquired approximately 14,000 additional Indian human remains;

(9) the human remains referred to in paragraphs (7) and (8) have long been a matter of concern for many Indian tribes and Alaska Native villages which are determined to provide an appropriate resting place for their ancestors;

(10) identification of the origins of such human regains is essential to addressing that concern; and

(11) an extraordinary site on the National mall in the District of Columbia (U.S. Government Reservation No. 6) is reserved for the use of the Smithsonian Institution and is available for construction of the National Museum of the American Indian.

SEC. 3. NATIONAL MUSEUM OF THE AMERICAN INDIAN.

(a) ESTABLISHMENT.—There is established, within the Smithsonian Institution, a living memorial to Native Americans and their traditionas which shall be known as the "National Museum of the American Indian.".

(b) PURPOSES.—The purposes of the National Museum are to——

(1) advance the study of National Americans, including the study of language, literature history, art, anthropolgy, and life;

(2) collect, preserve, and exhibit Native American objects of artistic, historical, literary, anthropological, and scientific interest;

(3) provide for Native American research and study programs; and

(4) provide for the means of carrying out paragraphs (1), (2), and (3) in the District of Columbia, the State of New York, and other appropriate locations.

SEC. 4. AUTHORITY OF THE BOARD OF REGENTS TO ENTER INTO AN AGREEMENT PROVIDING FOR TRANSFER OF HEYE FOUNDATION ASSETS TO THE SMITHSONIAN INSTITUTION.

The Board of Regents is authorized to enter into an agreement with the Heye Foundation, to provide for the transfer to the Smithsonian Institution of title to the Heye Foundation assets. The agreement shall—

(1) require that the use of the assets be consistent with section 3(b); and

(2) be governed by, and construed in accordance with, the law of the State of New York.

The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over any cause of action arising under the agreement.

SEC. 5. BOARD OF TRUSTEES OF THE NATIONAL MUSEUM OF THE AMERICAN INDIAN.

(a) IN GENERAL.—The National Museum shall be under a Board of Trustees with the duties, powers, and authority specified in this section.

(b) GENERAL DUTIES AND POWERS.—The Board of Trustees shall—

(1) recommend annual operating budgets for the National Museum to the Board of Regents;

(2) advise and assist the Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the National Museum;

(3) adopt bylaws for the Board of Trustees;

(4) designate a chairman and other officers from among the members of the Board of Trustees; and

(5) report annually to the Board of Regents on the acquisition, disposition, and display of Native American objects and artifacts and on other appropriate matters.

(c) SOLE AUTHORITY.—Subject to the general policies of the Board of Regents, the Board of Trustees shall have the sole authority to—

(1) lend, exchange, sell, or otherwise dispose of any part of the collections of the National Museum, with the proceeds of such transactions to be used for additions to the collections of the National Museum or additions to the endowment of the National Museum, as the case may be;

(2) purchase, accept, borrow, or otherwise acquire artifacts and other objects for addition to the collections of the National Museum; and

(3) specify criteria for use of the collections of the National Museum for appropriate purposes, including research, evaluation, education, and method of display.

(d) AUTHORITY.—Subject to the general policies of the Board of Regents, the Board of Trustees shall have authority to—

(1) provide for restoration, preservation, and maintenance of the collections of the National Museum;

(2) solicit funds for the National Museum and determine the purposes to which such funds shall be applied; and

(3) approve expenditures from the endowment of the National Museum for any purposes of the Museum.

(e) INITIAL APPOINTMENTS TO THE BOARD OF TRUSTEES.—

(1) MEMBERSHIP.—The initial membership of the Board of Trustees shall consist of—

(A) the Secretary of the Smithsonian Institution;

(B) an Assistant Secretary of the Smithsonian Institution appointed by the Board of Regents;

(C) 8 individuals appointed by the Board of Regents; and

(D) 15 individuals, each of whom shall be a member of the board of trustees of the Heye Museum, appointed by the Board of Regents from a list of nominees recommended by the board of trustees of the Heye Museum.

(2) SPECIAL RULE.—At least 7 of the 23 members appointed under subparagraphs (C) and (D) of paragraph (1) shall be Indians.

(3) TERMS.—The trustee appointed under paragraph (1)(B) shall serve at the pleasure of the Board of Regents. The terms of the trustees appointed under subparagraph (C) or (D) of paragraph (1) shall be 3 years, beginning on the date of the transfer of the Heye Foundation assets to the Smithsonian Institution.

(4) VACANCIES.—Any vacancy shall be filled only for the remainder of the term involved. Any vacancy appointment under paragraph (1)(D) shall not be subject to the source and recommendation requirements of that paragraph, but shall be subject to paragraph (2).

(f) SUBSEQUENT APPOINTMENTS TO THE BOARD OF TRUSTEES.—

(1) MEMBERSHIP.—Upon the expiration of the terms under subsection (e), the Board of Trustees shall consist of—

(A) the Secretary of the Smithsonian Institution;

(B) an Assistant Secretary of the Smithsonian Institution appointed by the Board of Regents; and

(C) 23 individuals appointed by the Board of Regents from a list of nominees recommended by the Board of Trustees.

(2) SPECIAL RULE.—At least 12 of the 23 members appointed under paragraph (1)(C) shall be Indians.

(3) TERMS.—The trustee appointed under paragraph (1)(B) shall serve at the pleasure of the Board of Regents. Except as otherwise provided in the next sentence, the terms of members appointed under paragraph (1)(C) shall be 3 years. Of the members first appointed under paragraph (1)(C)—

(A) 7 members, 4 of whom shall be Indians, shall be appointed for a term of one year, as designated at the time of appointment; and

(B) 8 members, 4 of whom shall be Indians, shall be appointed for a term of 2 years, as designated at the time of appointment.

(4) VACANCIES.—Any vacancy shall be filled only for the remainder of the term involved.

(g) QUORUM.—A majority of the members of the Board of Trustees then in office shall constitute a quorum.

(h) EXPENSES.—Members of the Board shall be entitled (to the same extent as provided in section 5703 of title 5, United States Code, with respect to employees serving intermittently in the Government service) to per diem, travel, and transportation expenses for each day (including travel time) during which they are engaged in the performance of their duties.

SEC. 6. DIRECTOR AND STAFF OF THE NATIONAL MUSEUM.

(a) IN GENERAL.—The Secretary shall appoint—

(1) a Director who, subject to the policies of the Board of Trustees, shall manage the National Museum; and

(2) other employees of the National Museum, to serve under the Director.

(b) OFFER OF EMPLOYMENT TO HEYE FOUNDATION EMPLOYEES.—Each employee of the Heye Museum on the day before the date of the transfer of the Heye Foundation assets to the Smithsonian Institution shall be offered employment with the Smithsonian Institution—

(1) under the usual terms of such employment; and

(2) at a rate of pay not less than the rate applicable to the employee on the day before the date of the transfer.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Secretary may—

(1) appoint the Director, 2 employees under subsection (a)(2), and the employees under subsection (b) without regard to the provisions of title 5, United States Code, governing appointments in the competitive service;

(2) fix the pay of the Director and such 2 employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates; and

(3) fix the pay of the employees under subsection (b) in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, subject to subsection (b)(2).

SEC. 7. MUSEUM FACILITIES.

(a) NATIONAL MUSEUM MALL FACILITY.—The Board of Regents shall plan, design, and construct a facility on the area bounded by Third Street, Maryland Avenue, Independence Avenue, Fourth Street, and Jefferson Drive, Southwest, in the District of Columbia to house the portion of the National Museum to be located in the District of Columbia. The Board of Regents shall pay not more than 2/3 of the total cost of planning, designing, and constructing the facility from funds appropriated to the Board of Regents. The remainder of the costs shall be paid from non-Federal sources.

(b) NATIONAL MUSEUM HEYE CENTER FACILITY.—

(1) LEASE OF SPACE FROM GSA.—

(A) TERMS.—Notwithstanding section 210(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(j)), the Administrator of General Services may lease, at a nominal charge, to the Smithsonian Institution space in the old United States Custom House at One Bowling Green, New York, New York, to house the portion of the National Museum to be located in the city of New York. The lease shall be subject to such terms as may be mutually agreed upon by the Administrator and the Secretary of the Smithsonian Institution. The term of the lease shall not be less than 99 years.

(B) REIMBURSEMENT OF PUBLIC BUILDINGS FUND.—The Administrator of General Services may reimburse the fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)) for the difference between the amount charged to the Smithsonian Institution for leasing space under this paragraph and the commercial charge under section 210(j) of such Act which, but for this paragraph, would apply to the leasing of such space. There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out this subparagraph for fiscal years beginning after September 30, 1990.

(2) CONSTRUCTION.—

(A) MUSEUM FACILITY.—The Board of Regents shall plan, design, and construct a significant facility for the National Museum in the space leased under paragraph (1).

(B) AUDITORIUM AND LOADING DOCK FACILITY.—The Administrator of General Services shall plan, design, and construct an auditorium and loading dock in the Old United States Custom House at One Bowling Green, New York, New York, for the shared use of all the occupants of the building, including the National Museum.

(C) SQUARE FOOTAGE.—The facilities to be constructed under this paragraph shall have, in the aggregate, a total square footage of approximately 82,500 square feet.

(3) REPAIRS AND ALTERATIONS.—After construction of the facility under paragraph (2)(A), repairs and alterations of the facility shall be the responsibility of the Board of Regents.

(4) REIMBURSEMENT OF GSA.—The Board of Regents shall reimburse the Administrator for the Smithsonian Institution's pro rata share of the cost of utili-

ties, maintenance, cleaning, and other services incurred with respect to the space leased under paragraph (1) and the full cost of any repairs or alterations made by the General Services Administration at the request of the Smithsonian Institution with respect to the space.

(5) COST SHARING.—

(A) GENERAL RULES.—The Board of Regents shall pay ⅓ of the costs of planning, designing, and constructing the facility under paragraph (2)(A) from funds appropriated to the Board of Regents. The remainder of the costs shall be paid for non-Federal sources.

(B) RESPONSIBILITIES OF NEW YORK CITY AND STATE.—Of the costs which are required to be paid from non-Federal sources under this paragraph, the city of New York, New York, and the State of New York have each agreed to pay $8,000,000 or an amount equal to ⅓ of the costs of planning, designing, and constructing the facility under paragraph (2)(A), whichever is less. Such payments shall be made to the Board of Regents in accordance with a payment schedule to be agreed upon by the city and State and the Board of Regents.

(C) LIMITATION ON OBLIGATIONS OF FEDERAL FUNDS.—Federal funds may not be obligated for actual construction of a facility under paragraph (2)(A) in a fiscal year until non-Federal sources have paid to the Board of Regents the non-Federal share of such costs which the Board of Regents estimates will be inccured in such year.

(6) DESIGNATION.—The facility to be constructed under paragraph (2)(A) shall be known and designated as the "George Gustav Heye Center of the National Museum of the American Indian".

(c) MUSEUM SUPPORT CENTER FACILITY.—The Board of Regents shall plan, design, and construct a facility for the conservation and storage of the collections of the National Museum at the Museum Support Center of the Smithsonian Institution.

(d) MINIMUM SQUARE FOOTAGE.—The facilities to be constructed under this section shall have, in the aggregate, a total square footage of at least 400,000 square feet.

(e) AUTHORITY TO CONTRACT WITH GSA.—The Board of Regents and the Administrator of General Services may enter into such agreements as may be necessary for planning, designing, and constructing facilities under this section (other than subsection (b)(2)(B)). Under such agreements, the Board of Regents shall transfer to the Administrator, from funds available for planning, designing, and constructing such facilities, such amounts as may be necessary for expenses of the General Services Administration with respect to planning, designing, and constructing such facilities.

(f) LIMITATION ON OBLIGATION OF FEDERAL FUNDS.—Notwithstanding any other provision of this Act, funds appropriated for carrying out this section may not be obligated for actual construction of any facility under this section until the 60th day after the date on which the Board of Regents transmits to Congress a written analysis of the total estimated cost of the construction and a cost-sharing plan projecting the amount for Federal appropriations and for non-Federal contributions for the construction on a fiscal year basis.

SEC. 8. CUSTOM HOUSE OFFICE SPACE AND AUDITORIUM.

(a) REPAIRS AND ALTERATIONS.—The Administrator of General Services shall make such repairs and alterations as may be necessary in the portion of the Old United States Custom House at One Bowling Green, New York, New York, which is not leased to the Board of Regents under section 7(b) and which, as of the date of the enactment of this Act, has not been altered.

(b) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the Administrator of General Services $25,000,000 from the fund established pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)) to carry out this section and section 7(b)(2)(B).

SEC. 9. AUDUBON TERRACE.

(a) IN GENERAL.—The Board of Regents shall—

(1) assure that, on the date on which a qualified successor to the Heye Foundation at Audubon Terrace first takes possession of Audubon Terrace, an area of at least 2,000 square feet at that facility is accessible to the public and physically suitable for exhibition of museum objects and for related exhibition activities;

(2) upon written agreement between the Board and any qualifed successor, lend objects from the collections of the Smithsonian Institution to the successor for exhibition at Audubon Terrace; and

(3) upon written agreement between the Board and any qualified successor, provide training, scholarship, technical, and other assistance (other than operat-

ing funds) with respect to the area referred to in paragraph (1) for the purposes described in that paragraph.

(b) DETERMINATION OF CHARGES.—Any charge by the Board of Regents for activities pursuant to agreements under paragraph (2) or (3) of subsection (a) shall be determined according to the ability of the successor to pay.

(c) DEFINITION.—As used in this section, the terms "qualified successor to the Heye Foundation at Audubon Terrace", "qualified successor", and, "successor" mean an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, and exempt from tax under section 501(a) of such Code, that, as determined by the Board of Regents—

(1) is a successor occupant to the Heye Foundation at Audubon Terrace, 3753 Broadway, New York, New York;

(2) is qualified to operate the area referred to in paragraph (1) for the purposes described in that paragraph; and

(3) is committed to making a good faith effort to respond to community cultural interests in such operation.

SEC. 10. BOARD OF REGENTS FUNCTIONS WITH RESPECT TO CERTAIN AGREEMENTS AND PROGRAMS.

(a) PRIORITY TO BE GIVEN TO INDIAN ORGANIZATIONS WITH RESPECT TO CERTAIN AGREEMENTS.—In entering into agreements with museums and other educational and cultural organizations to—

(1) lend Native American artifacts and objects from any collection of the Smithsonian Institution;

(2) sponsor or coordinate traveling exhibitions of artifacts and objects; or

(3) provide training or technical assistance;

the Board of Regents shall give priority to agreements with Indian organizations, including Indian tribes, museums, cultural centers, educational institutions, libraries, and archives. Such agreements may provide that loans or services to such organizations may be furnished by the Smithsonian Institution at minimal or no cost.

(b) INDIAN PROGRAMS.—The Board of Regents may establish—

(1) programs to serve Indian tribes and communities; and

(2) in cooperation with educational institutions, including tribally controlled community colleges (as defined in section 2 of the Tribally Controlled Community College Assistance Act of 1978), programs to enhance the opportunities for Indians in the areas of museum studies, management, and research.

(c) INDIAN MUSEUM MANAGEMENT FELLOWSHIPS.—The Board of Regents shall establish an Indian Museum Management Fellowship program to provide stipend support to Indians for training in museum development and management.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 for each fiscal year, beginning with fiscal year 1991, to carry out subsections (b) and (c).

SEC. 11. INVENTORY, IDENTIFICATION, AND RETURN OF INDIAN HUMAN REMAINS AND INDIAN FUNERARY OBJECTS IN THE POSSESSION OF THE SMITHSONIAN INSTITUTION.

(a) INVENTORY AND IDENTIFICATION.—The Secretary of the Smithsonian Institution, in consultation and cooperation with traditional Indian religious leaders and government officials of Indian tribes, shall—

(1) inventory the Indian human remains and Indian funerary objects in the possession or control of the Smithsonian Institution; and

(2) using the best available scientific and historical documentation, identify the origins of such remains and objects.

(b) NOTICE IN CASE OF IDENTIFICATION OF TRIBAL ORIGIN.—If the tribal origin of any Indian remains or Indian funerary objective is identified by a preponderance of the evidence, the Secretary shall so notify any affected Indian tribe at the earliest opportunity.

(c) RETURN OF INDIAN HUMAN REMAINS AND ASSOCIATED INDIAN FUNERARY OBJECTS.—If any Indian human remains are identified by a preponderance of the evidence as those of a particular individual or as those of an individual culturally affiliated with a particular tribe, the Secretary, upon the request of the descendants of such individual or of the Indian tribe shall expeditiously return such remains (together with any associated funerary objects) to the descendants or tribe, as the case may be.

(d) RETURN OF INDIAN FUNERARY OBJECTIVES NOT ASSOCIATED WITH INDIAN HUMAN REMAINS.—If any Indian funerary object not associated with Indian human remains is identified by a preponderance of the evidence as having been removed from a specific burial site of an individual culturally affiliated with a particular

Indian tribe, the Secretary, upon the request of the Indian tribe, such expeditiously return such object to the tribe.

(e) INTERPRETATION.—Nothing in this section shall be interpreted as—

(1) limiting the authority of the Smithsonian Institution to return or repatriate Indian human remains or Indian funerary objects to Indian tribes or individuals; or

(2) delaying actions on pending repatriation requests, denying or otherwise affecting access to the courts, or limiting any procedural or substantive rights which may otherwise be secured to Indian tribes or individuals.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years to carry out this section.

SEC. 12. SPECIAL COMMITTEE TO REVIEW THE INVENTORY, IDENTIFICATION, AND RETURN OF INDIAN HUMAN REMAINS AND INDIAN FUNERARY OBJECTS.

(a) ESTABLISHMENT; DUTIES.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Smithsonian Institution shall appoint a special committee to monitor and review the inventory, identification, and return of Indian human remains and Indian funerary objects under section 11. In carrying out its duties, the committee shall—

(1) with respect to the inventory and identification, ensure fair and objective consideration and assessment of all relevant evidence;

(2) upon the request of any affected party or otherwise, review any finding relating to the origin or the return of such remains or objects;

(3) facilitate the resolution of any dispute that may arise between Indian tribes with respect to the return of such remains or objects; and

(4) perform such other related functions as the Secretary may assign.

(b) MEMBERSHIP.—The committee shall consist of five members, of whom—

(1) three members shall be appointed from among nominations submitted by Indian tribes and organizations; and

(2) the Secretary shall designate one member as chairman.

The Secretary may not appoint to the committee any individual who is an officer or employee of the Government (including the Smithsonian Institution) or any individual who is otherwise affiliated with the Smithsonian Institution.

(c) ACCESS.—The Secretary shall ensure that the members of the committee have full and free access to the Indian human remains and Indian funerary objects subject to section 11 and to any related evidence, including scientific and historical documents.

(d) PAY AND EXPENSES OF MEMBERS.—Members of the committee shall—

(1) be paid the daily equivalent of the annual rate of basic pay payable for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code; and

(2) be entitled (to the same extent as provided in section 5703 of such title, with respect to employees serving intermittently in the Government service) to per diem, travel, and transportation expenses;

for each day (including travel time) during which they are engaged in the performance of their duties.

(e) RULES AND ADMINISTRATIVE SUPPORT.—The Secretary shall prescribe regulations and provide administrative support for the committee.

(f) REPORT AND TERMINATION.—At the conclusion of the work of the committee, the Secretary shall so certify by report to the Congress. The committee shall cease to exist 120 days after the submission of the report.

(g) NONAPPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the committee.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $250,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years to carry out this section.

SEC. 13. GRANTS BY THE SECRETARY OF THE INTERIOR TO ASSIST INDIAN TRIBES WITH RESPECT TO AGREEMENTS FOR THE RETURN OF INDIAN HUMAN REMAINS AND INDIAN FUNERARY OBJECTS.

(a) IN GENERAL.—The Secretary of the Interior may make grants to Indian tribes to assist such tribes in reaching and carrying out agreements with—

(1) the Board of Regents for the return of Indian human remains and Indian funerary objects under section 11; and

(2) other Federal and non-Federal entities for additional returns of Indian human remains and Indian funerary objects.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years for grants under subsection (a).

SEC. 14. DEFINITIONS.

As used in this Act—

(1) the term "Board of Regents" means the Board of Regents of the Smithsonian Institution;

(2) the term "Board of Trustees" means the Board of Trustees of the National Museum of the American Indian;

(3) the term "burial site" means a natural or prepared physical location, whether below, on, or above the surface of the earth, into which, as a part of a death rite or ceremony of a culture, individual human remains are deposited;

(4) the term "funerary object" means an object that, as part of a death rite or ceromony of a culture, is intentionally placed with individual human remains, either at the time of burial or later;

(5) the term "Heye Foundation assets" means the collections, endowment, and all other property of the Heye Foundation (other than the interest of the Heye Foundation in Audubon Terrace) described in the Memorandum of Understanding between the Smithsonian Institution and the Heye Foundation, dated May 8, 1989, and the schedules attached to such memorandum;

(6) the term "Heye Museum" means the Museum of the American Indian, Heye Foundation;

(7) the term "Indian" means a member of an Indian tribe, and such term includes an Alaska Native;

(8) the term "Indian tribe" means a tribe, band, nation, or other organized group or commodity of Indians recognized by the United States, and such term includes an Alaska Native village;

(9) the term "National Museum" means the National Museum of the American Indian established by section 3;

(10) the term "Native American" means an individual of a tribe, people, or culture that is indigenous to the Americas and such term includes a Native Hawaiian; and

(11) the term "Native Hawaiian" means a member or descendant of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

(a) FUNDING.—There is authorized to be appropriated to the Board of Regents to carry out this Act (other than sections 7(b)(1)(B), 7(b)(2)(B), 8, 10, 11, 12, and 13)—

(1) $10,000,000 for fiscal year 1990; and

(2) such sums as may be necessary for each succeeding fiscal year.

(b) PERIOD OF AVAILABILITY.—Funds appropriated under subsection (a) shall remain available without fiscal year limitation for any period prior to the availability of the facilities to be constructed under section 7 for administrative and planning expenses and for the care and custody of the collections of the National Museum.

Amend the title so as to read:

A bill to establish the National Museum of the American Indian within the Smithsonian Institution, and for other purposes.

PURPOSE

The purpose of H.R. 2668 is to establish within the Smithsonian Institution a living memorial to Native Americans and their traditions. This memorial will be known as the National Museum of the American Indian. The National Museum will have 3 facilities, in the Old U.S. Custom House in New York City, on the Mall in Washington, D.C., and facilities at the Smithsonian Museum Support Center in Suitland, Maryland. To assist American Indians in the presentation of their history and cultural achievements to the American people, H.R. 2668 requires Native Americans to be on the Board of Trustees of the National Museum.

The creation of the National Museum of the American Indian will promote the awareness of Native American cultures and will provide access to the invaluable artifacts of these cultures. It will also promote opportunities for Indians in museum studies, management, and research.

H.R. 2668 also provides for the conveyance of the collection of the Museum of the American Indian, Heye Foundation, in New York City from the Foundation to the Smithsonian Institution. This Foundation owns a large collection of approximately 1,000,000 pieces that exemplifies the cultural heritage of the indigenous Native Americans of North, Central, and South America. However, the Foundation is no longer able to maintain the collection, and the objects are in peril. Transfer of the collection to the Smithsonian Institution will preserve the artifacts for future generations.

The other goal of H.R. 2668 is to provide an orderly process for conducting an inventory of Indian remains and funerary objects in the possession of the Smithsonian, and to have these remains and objects transferred to the families or tribes of these individuals when the family or tribe can be determined.

H.R. 2668 also encourages the continued use of the Audubon Terrace facility that houses the current Museum of the American Indian, Heye Foundation, as a cultural resource to educate people regarding Native Americans and other cultural resources of the United States.

BACKGROUND AND NEED

The United States does not have a national museum devoted exclusively to the history and art of the peoples who were indigenous to the North and South American continents. While the Smithsonian Institution sponsors many Native American programs, none of its museums and research facilities are devoted to these purposes.

In 1916 George Gustav Heye established the Heye Foundation as a charitable trust to create and maintain a museum in New York City. The collection of this foundation is in the Museum of the American Indian, Heye Foundation, located at Audubon Terrace at 155th and Broadway in New York City and at a warehouse in the Bronx. Mr. Heye traveled widely over the Americas collecting many antiquities for the collection. The collection has over 1,000,000 pieces from aboriginal tribes of North, Central, and South America, including artifacts from Arctic Eskimos, the Incas, the Aztecs, the Mayans, the Amazon forests peoples, peoples of the Caribbean, and extinct tribes of Tierra del Fuego. Objects in the collection date from 9,000 years ago to contemporary times.

Approximately 2 percent of the Heye collection can be exhibited at the Audubon Terrace facility. The bulk of the remaining collectin is in the Bronx warehouse.

Over the years, the endowment provided by Mr. Heye has proved insufficient to maintain and preserve this valuable collection and the public facilities have become less attractive to the museum-going public. The annual trust income of $390,000 is inadequate to meet the Museum's annual operating costs of $1.7 million. Although private funds have supplemented some of the operating costs, there is grave concern that many of the priceless artifacts

are in danger of deterioration because of overcrowding and improper storage conditions.

On May 8, 1989, the Smithsonian Institution entered into a Memorandum of Understanding with the Museum of the American Indian, Heye Foundation. The agreement provides for the conveyance of the collection of the Heye Foundation to the Smithsonian Institution, and lays the framework within which the Smithsonian will preserve, study, and exhibit the artifacts in the collection. However this agreement was based on two conditions: First, that Congress would pass enabling legislation allowing the Smithsonian to establish the National Museum; and second, that the courts of New York would approve the transfer.

The terms of the trust indenture established by Mr. Heye provided that a museum must be located in New York State. In order to carry out this purpose, H.R. 2668 requires the Smithsonian to establish a significant National Museum Facility in the Old U.S. Custom House. The conveyance agreement between the Smithsonian Institution and the Heye Foundation Board of Trustees contemplates that the New York Attorney General and the Heye Foundation attorneys will petition the New York court having jurisdiction over the trust instruments to allow the transfer of the Heye collection to the Smithsonian Institution, provided that a presence of the Heye collection is maintained in New York.

Over the past century, the Smithsonian Institution has become the repository of approximately 18,000 human remains of Indians and numerous associated funerary objects. In 1868, the Surgeon General of the Army ordered the approximately 4,000 Indian human remains from battlefields and burial sites to be sent to the Army Medical Museum. These remains were later transferred to the Smithsonian Institution. Additionally, the Smithsonian Institution has acquired approximately 14,000 Indian human remains from archaeological excavations, individual donations, and museum donations.

Virtually since the inception of the Smithsonian's collecting and conducting research on Indian human remains, the policies of Indian tribes and traditional leaders have been seeking the repatriation of the remains of their ancestors. Native leaders have made strong moral and legal arguments against the excavation of graves and the curation and display of Indian human remains. Indian people believe that they are responsible for the care of their ancestors and that human remains have great religious and spiritual significance and should not be mere objects of archaeological interest. They believe that the Indian human remains and funerary objects in the possession of the Smithsonian Institution should be returned to descendants or tribes for proper burial.

The archaeologists and anthropologists have argued that the Indian remains and funerary objects in the collections of the Smithsonian are of scientific value. The age, sex, injuries, and other physical attributes of human remains contribute to analyses of social dimensions associated with individuals, allowing an understanding of the customs and values of past societies which cannot be derived from studies of architecture or tools. Studies of genetic markers in the skeleton allow for the reconstruction of marriage systems, of migrations, and relationships among past populations.

Much can be learned of the effects of the environment on these populations, as well as the history of diseases. The scientific research methods are continuing to expand, allowing existing collections to be restudied and evaluated, both to reach new conclusions and to review previous interpretations. Therefore, they believe that the Smithsonian's collections should be maintained for future research purposes.

DISCUSSION

The Smithsonian Institution preserves, displays, and studies many antiquities that provide valuable information concerning the history of the world and, in particular, the United States. As the bequest of James Smithson stated, the purpose of his trust was for the "increase and diffusion of knowledge among men." The Smithsonian Institution educates millions of individuals concerning the world about us and where we, as a people, have come from. However, the Smithsonian Institution does not have a museum that is dedicated to the people who settled and developed this continent long before the European settlers arrived. Historically, Native Americans comprised vast cultures with very developed systems of transportation, agriculture, fishing, art, and music. Native Americans continue to make major contributions to the American society. Few people understand these contributions, due in large part to the lack of educational institutions that have the means to research and teach them about Native Americans.

The Committee believes that it is important that a national museum be established to recognize the Native American peoples, and the cultures that they developed. It is only through research and education that we as a nation can learn more about ourselves. The creation of a National Museum of the American Indian will vastly increase the amount of research on, and the dispersal of knowledge about, Native Americans.

George Gustav Heye was an active collector of Native American artifacts that were acquired during his many trips in North, Central, and South America. These objects represent many of the vanished prehistoric cultures and contemporary Indian arts on these continents. To study these cultures and to educate more people concerning Native Americans, Mr. Heye created the Museum of the American Indian, Heye Foundation. Unfortunately, the endowment created by Mr. Heye has proved insufficient to provide for the continued maintenance and operation of the museum. Therefore, many priceless artifacts of these past civilizations may be lost due to insufficient resources to protect them.

The trust established by Mr. Heye stated that it's object and purpose was:

> (For) the advancement of the study of anthropology, particularly in connection with that of the aboriginal people of the Americas and the study of their languages, literature, history, art and life. (Also) to collect, acquire by grant, gift, purchase, devise or bequest; to hold and dispose of, anthropological collections and objects of scientific or educational interest relating to the science or study of anthropology; to maintain and to add to such collections; to

> cooperate with any corporation or institution formed or carried on for educational or scientific purposes for the proper use, display or increase of such collections, * * * to promote the public welfare by actively advancing learning and providing means for encouraging and carrying on the beforementioned work within the State of New York.

H.R. 2668 will accomplish these goals. The Smithsonian Institution possesses all of the resources necessary to achieve and maintain the objects and purposes of the Heye Trust. The facility to be built at the Old U.S. Custom House in New York City will also fulfill Mr. Heye's purpose to maintain a significant facility in New York City in order for people to have a place in which they can learn more about Native Americans. While most of the collection may be housed in the Mall Facility in Washington, D.C., or stored in the Museum Support Center in Suitland, Maryland, it is the Committee's intent that important artifacts from the Heye collection be displayed in the Old U.S. Custom House on a rotating basis in order to implement Mr. Heye's intent that the citizens of New York have a place in which they may learn about Native Americans.

The Committee believes that, in order for this invaluable collection of American history to be preserved, it is necessary for them to be placed in an institution with the ability and resources to protect them. Therefore, H.R. 2668 allows the Smithsonian Institution to acquire, through an acquisition agreement with the Heye Foundation, the collections, endowments, and assets of the Foundation. However, since the property deed for Audubon Terrace provides for the reversion of the property to the Huntington family, this asset of the Foundation will not be transferred to the Smithsonian Institution.

Section 3(b)(2) describes the types of Native American objects that shall be included in the National Museum. The Committee intends that this section be given a broad interpretation, that it show the evolution of Native American cultures through today, and that it include the works of contemporary Indian artists that serve that purpose.

This Committee has been particularly involved and concerned about the construction of the facilities for the National Museum of the American Indian. Section 7 of H.R. 2668 requires the Board of Regents of the Smithsonian Institution to plan, design and construct 3 facilities for the National Museum. One facility will be on the Mall in Washington, D.C., immediately East of the National Air and Space Museum. The second facility will be in the Old U.S. Custom House building in New York City. The third facility will be at the Museum Support Center in Suitland, Maryland, where the Smithsonian will conserve and store much of the collection of the Museum. The total square footage of all 3 facilities must total approximately 400,000 square feet, with the Old U.S. Custom House facility totalling approximately 82,500 square feet.

The Mall facility will be on the area bounded by Third Street, Maryland Avenue, Independence Avenue, Fourth Street, and Jefferson Drive, Southwest, in the District of Columbia. The Board of Regents may not obligate more than two-thirds of the total cost of

planning, designing, and constructing the facility from federally appointed funds. The remainder of the funding for the facility must be raised from non-Federal sources. The two-thirds Federal share limitation is intended to be a limit based on the total facility cost, not a limit on the Federal share for any particular phase of the project. For example, the Smithsonian may pay 100 percent of the planning and designing cost. However, this will require non-Federal funds to pay a higher percentage of the actual construction costs of the facility.

The "George Gustav Heye Center of the National Museum of the American Indian" will be housed in space leased from the General Services Administration (GSA) in the Old U.S. Custom House at One Bowling Green, New York, New York. The lease will be subject to the standard Federal lease terms that are mutually agreed upon by the Administrator of General Services and the Secretary of the Smithsonian Institution. The lease may be of any length that is not less than 99 years.

Normally, when GSA leases space in a Federal building to a tenant, the rent is based on the comparable commercial rent charged in the area for similar space. However, section 7(b)(1)(A) allows the Administrator to lease the space to the Smithsonian for a "nominal charge". The Committee expects this charge to be approximately $1.00. Since the facility will be renovated by the Smithsonian, it is not necessary for the Smithsonian to pay the normal rent to GSA. However, since GSA will be receiving less rent than the amount they would normally be receiving from a tenant agency, section 7(b)(1)(B) authorizes appropriations to the Administrator to fund the difference between the nominal charge and the normal rental rate.

After the Smithsonian Institution constructs the facility in the Old U.S. Custom House, the responsibility for repairs and alterations of the Museum is with the Smithsonian. However, the Smithsonian may contract with the GSA for these costs. When GSA carries out any repairs or alterations under contract to the Smithsonian, the Smithsonian must reimburse them for their costs. The Smithsonian is also required to reimburse the GSA for their pro rata share of the cost of utilities, maintenance, cleaning, and other services incurred with respect to the leased space.

The Smithsonian Institution may not obligate more than one-third of the cost of planning, designing, and constructing the facility in the Old U.S. Custom House from federally appropriated funds. The remainder of the funding for the facility must be raised from non-Federal sources. The one-third Federal share limitation is intended to be a limit based on the total facility cost, not a limit on the Federal share for any particular phase of the project. For example, the Smithsonian may pay 100 percent of the planning and designing cost, however this will require non-Federal funds to pay a higher percentage of the actual construction costs of the facility. The City and State of New York have each agreed to pay $8,000,000 or one-third of the cost (whichever is less) of planning, designing, and constructing the facility in the Old U.S. Custom House. If project costs exceed $24 million, the Smithsonian will have to raise two-thirds of the excess amount from non-Federal sources.

The third facility, the Museum Support Center, will be an addition to the existing Museum Support Center in Suitland, Maryland. This facility will be used to preserve, store, and maintain the portions of the collection that are not on display. The existing facility has been built in modular form, and it will be relatively easy for the Smithsonian to add a module to meet the needs of the National Museum.

As the Smithsonian proceeds with the planning and designing of the facilities, the actual cost estimates will become more certain. Therefore, before any amounts may be obligated for actual construction, the Smithsonian must submit to Congress a written analysis of the total estimated cost of the construction and the cost-sharing plan projection for the Federal and non-Federal shares for the planning, designing, and construction of the facilities. The report must detail separately the cost of each facility and the cost-sharing for that facility.

The Administrator of General Services is also required to plan, design, and construct an auditorium and loading dock in the Old U.S. Custom House for the shared use of all of the federal tenants in the building, including the National Museum. When designing the renovation of the auditorium and loading dock, the Administrator should consult with the Smithsonian Institution to ensure that the Smithsonian's needs are met by the facility. Funds for this portion of the renovation have been authorized in section 8 of H.R. 2668.

When H.R. 2668 requires the Board of Regents or the Secretary to perform a duty, it is anticipated that the Board or Secretary will delegate much of these duties to the employees of the Smithsonian.

To help the communities in New York City use the existing museum at Audubon Terrace for educational purposes, section 9 requires the Board of Regents to lend objects from the collections of the Smithsonian Institution to the successor occupant. At present, the Smithsonian Institution plans on using the Audubon Terrace facility as a temporary storage facility to house a portion of the Heye collection until the other facilities are built under this Act. The Smithsonian will need to install a security system and climate control system to protect the collection. In requiring the Board of Regents to assure that Audubon Terrace is physically suitable for exhibition of museum objects on the date the successor takes possession of Audubon Terrace, the Committee intends that the Smithsonian will leave in place these security and climate control systems. However, these are the only capital improvements that are currently anticipated.

The requirements concerning Audubon Terrace are based on the successor being a tax exempt organization that desires to operate a museum in the building. At present it is not known if such a successor exists. The question of ownership of the Audubon Terrace building remains to be resolved by the New York courts. If the person who occupies the building after the Smithsonian, if any, is not a qualified successor, as defined in the bill, then the Smithsonian is under no obligation to provide exhibition space or leave the security or other systems which they have installed. If the Smithsonian leaves without a qualified successor being determined, then the Smithsonian's requirements under section 9(a)(1) have been

met if the building is physically suitable when the Smithsonian vacated the facility.

Section 7(c) of H.R. 2668, as introduced, authorized the Board of Regents to charge an admission fee for admission to the Old U.S. Custom House facility. The Smithsonian currently charges an admission fee to the Cooper-Hewitt Museum in New York City. This provision has been deleted since the Smithsonian maintains it currently has lawful authority to charge an admission fee.

To make the Smithsonian's Indian collection more easily accessible to people of other regions of the United States, section 10 provides for the loaning of artifacts and objects and for traveling exhibits. The Committee believes that Indian Tribes and museums should be given priority in consideration of loan and traveling exhibit agreements.

Section 11, pertaining to the inventory, identification, and return of Indian human remains and Indian funerary objects in the possession of the Smithsonian Institution, embodies an agreement reached in August, 1989, between representatives of the Smithsonian and the Indian community with respect to the repatriation of those remains and funerary objects. The remains and objects, acquired by the Smithsonian over the years and under various circumstances, have been held in trust by the Institution and curated for scientific research.

The agreement to repatriate Indian human remains and funerary objects under certain circumstances represents a careful balancing of the essential nature of these remains and objects in the cultural and religious traditions of Indian people with their medical and scientific value. The first step in the process is a complete inventory of Indian human remains and funerary objects in the Smithsonian collections which, in due course, will encompass those in the existing Museum of the American Indian, Heye Foundation.

While the principal focus of section 11 is the return of human remains and associated funerary objects that have been clearly identified, by available evidence, as being of a particular individual or of a particular Indian tribe, the section also provides for the return of funerary objects not associated with human remains when the evidence shows that the objects are from a specific burial site.

Section 14(3) defines "burial site" as "a natural or prepared physical location, whether below, on, or above the surface of the earth, into which, as part of a death rite or ceremony or a culture, individual human remains are deposited". Section 14(4) defines "funerary objects" as "an object that, as a part of a death rite or ceremony of a culture, is intentionally placed with individual human remains, either at the time of burial or later". With respect to non-associated funerary objects, only those objects from the burial of an individual person, as opposed to mass burial or entire cemeteries, are subject to return.

The inventory is to be conducted by the Smithsonian using the best availabale historic documentation and scientific evidence, such as accession records, field notes, and research findings, in order to determine, insofar as possible, the association of remains and objects with contemporary tribes recognized by the United States. The Committee does not intend to preclude the use of tribal oral

tradition and history in that process. When the preponderance of documentation and evidence identifies such as an association, the affected tribe is to be notified of this at the earliest opportunity by the Secretary of the Smithsonian Institution. On request of either descendants of the individual or official representatives of the tribe, the Secretary is to return expeditiously the remains and funerary objects that have been so identified.

The Committee wishes to make clear that the establishment of this process is not meant to be a limitation on any other authority of the Smithsonian to return the remains and objects to Indian tribes nor to be a limitation on any other avenue or right that Indian tribes may have to seek the return. In addition, the limitation of this formal process to federally recognized Indian tribes is not meant to preclude the Smithsonian from returning remains and objects to non-federally recognized tribes, groups, or other Native entities.

The Committee believes that H.R. 2668 provides a reasonable method and policy for the repatriation of Indian bones and funerary objects in the possession of the Smithsonian Institution. However, many human remains in the collection are of unknown origin and will, therefore, remain in the collection.

Section 12 authorizes the establishment of a review committee to monitor and review the inventory and identification processes in order to ensure fair and objective consideration and assessment of all relevant evidence and to aid in the resolution of conflicts that may arise between tribes over the return of remains and objects. The 5-member committee is to be appointed by the Secretary of the Smithsonian Institution who will designate its chairman. Three members of the committee are to be chosen from nominees submitted by Indian tribes and organizations.

Section 13 of the bill authorizes the Secretary of the Interior to make grants to Indian tribes to assist them in their efforts to reach and implement voluntary agreements with the Smithsonian and other entities for the return of human remains and funerary objects. Concerns have been expressed about the use of the funds by tribal grantees for litigation expenses. The Committee wishes to make clear that it is not intended that these funds would be available for attorney fees or other litigation expenses.

LEGISLATIVE BACKGROUND

On October 13, 1987, Congressman Morris Udall introduced H.R. 3480, a bill to authorize the establishment of the National Museum of the American Indian, within the Smithsonian Institution, and to establish a memorial to the American Indian, and for other purposes. Also introduced during the 100th Congress by Congressman Byron Dorgan of North Dakota, was H.R. 5411, a bill to direct the Secretary of the Smithsonian Institution to transfer Indian skeleton remains to Indian tribes to provide for appropriate interment. However, they were not acted on primarily because of a failure to achieve a consensus on specific provisions of the bill.

In the 101st Congress, on June 15, 1989, Congressman Ben Nighthorse Campbell introduced H.R. 2668, a bill to authorize the establishment within the Smithsonian Institution of the National

Museum of the American Indian, to establish a memorial to the American Indian, and for other purposes. On February 27, 1989, Congressman Byron Dorgan introduced H.R. 1124, a bill to direct the Secretaray of the Smithsonian Institution to transfer Indian skeleton remains to Indian tribes to provide for appropriate interment. Congressman Morris Udall introduced H.R. 1646, a bill to provide for the protection of Indian graves and burial grounds.

On March 9, 1989, an oversight hearing was conducted by the Committee on Interior and Insular Affairs, which focused on the status of the tentative agreement between the City of New York, the Museum of the American Indian, Heye Foundation, and the Smithsonian Institution. Witnesses included Robert McCormick Adams, Secretary of the Smithsonian Institution; Vine Deloria, trustee of the Heye Foundation; Ed Costikyan, counsel for the Heye Foundation; Diane Coffey, city of New York; and Pamela Mann, office of the attorney general, State of New York. Testimony indicated that the parties were close to reaching an agreement.

On July 20, 1989, the Subcommittee on Public Buildings and Grounds of the Committee on Public Works and Transportation conducted a joint hearing on H.R. 2668 with the Subcommittee on Libraries and Memorials of the Committee on House Administration and the Committee on Interior and Insular Affairs. Witnesses included the Honorable Daniel K. Inouye, Senator from Hawaii; the Honorable Charles B. Rangel, Representative from New York; the Honorable Ted Weiss, Representative from New York; the Honorable Byron L. Dorgan, Representative from North Dakota; the Honorable Robert McCormick Adams, secretary of the Smithsonian Institution; Ms. Dianne Coffey, office of the Mayor, city of New York; Ms. Pamela Mann, office of the attorney general, State of New York; Mrs. Wilmot H. Kidd, board of trustees of the Museum of the American Indian, Heye Foundation; Ms. Susan Shown Harjo, National Congress of American Indians; Mr. Walter Echohawk, Native American Rights Fund; Mr. Jerry Flute, Association on American Indian Affairs; Dr. Michael Doss, National Indian Education Association; Dr. Mark Leon, Society for American Archaeology; Mr. Richard B. Stamps, Oakland University; Mr. Walter Fleming, Montana State University; Mr. Lonnie Selam, Yakima Tribal Council; and Mr. Nelson Wallulatum, chief of the Wasco Tribe.

There was a general consensus among the witnesses that a National Museum of the American Indian should be established within the Smithsonian Institution, and that the National Museum should include the collection of George Gustav Heye, currently housed in the Museum of the American Indian in New York City.

The State of New York stated that it was critically important that the Smithsonian be committed to maintain a substantial and permanent museum at the Old U.S. Custom House in New York City, and that the collections must be used for purposes set forth in the original trust indenture of George Gustav Heye.

Concern was raised regarding the issue of repatriation of the Native American skeletal remains and related funerary objects. There is widespread concern among American Indians about the remains of their ancestors. Testimony was received that many Indian leaders believe that the disinterment of Indian skeletal remains is a sacrilegious violation of Indian spiritual and religious

beliefs. However, physical and cultural anthropologists and archaeologists would like these remains to be available to them for scientific research, not just in the present, but in the future when technological advancements will enable them to learn more about Native American peoples and cultures.

Testimony was also received in support of the creation of a museum training program for Indians to enable them to obtain administrative, managerial, and curatorial employment in Indian museums.

On October 3, 1989, the Subcommittee on Public Buildings and Grounds met in markup session and adopted an amendment in the nature of a substitute to H.R. 2668. The amendment clarified the authorization of construction of the National Museum and the cost-sharing requirements for the project. The amendment also clarified the circumstances under which the Smithsonian must lend artifacts to the future successor occupant to Audubon Terrace, and clarified the standards for the repatriation of Indian remains and associated funerary objects to Indian tribes and descendants.

On October 12, 1989, the Committee on Public Works and Transportation met in markup session and adopted an amendment in the nature of a substitute to H.R. 2668 in lieu of the amendment adopted by the Subcommittee on Public Buildings and Grounds. The amendment reorganized the bill and made other minor changes to clarify the intent of the legislation. The Committee, by voice vote, ordered H.R. 2668, as amended, favorably reported to the House for consideration.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This provides that the Act may be cited as the "National Museum of the American Indian Act."

Section 2. Findings

This section contains extensive congressional findings relating to the absence of a national museum devoted to Indian art and history; the existence of and need to preserve the collection of the Museum of the American Indian, Heye Foundation, in New York City; the Heye Foundation's lack of adequate resources to preserve and display its collection; the desirability of the acquisition of the Heye Foundation collection by the Smithsonian Institution; the desirability of the establishment of a National Museum of the American Indian in Washington, D.C.; and the need to provide for the disposition of Indian human remains now held by the Smithsonian Institution.

Section 3. National Museum of the American Indian

Subsection (a) establishes, within the Smithsonian Institution, a living memorial to Native Americans to be known as the "National Museum of the American Indian."

Subsection (b) states that the purpose of the National Museum is to advance the study of Native Americans; collect, preserve and exhibit Native American objects; provide related programs of re-

search and study; and to carry on that work in Washington, D.C., New York, and elsewhere.

Section 4. Authority of the Board of Regents to enter into an agreement providing for the transfer of Heye Foundation assets to the Smithsonian Institution

Section 4 allows the Board of Regents of the Smithsonian Institution to enter into a conveyance agreement with the Heye Foundation providing for the transfer of the Heye Foundation collection to the Smithsonian Institution. The agreement must provide that the collection be used for the purposes set forth in section 3(b) and be governed by and construed in accordance with the laws of the State of New York. The United States District Court for the Southern District of New York is granted original and exclusive jurisdiction over civil actions arising under the conveyance agreement.

Section 5. Board of Trustees of the National Museum of the American Indian

Subsection (a) places the National museum under the authority of a Board of Trustees to the extent provided in the section.

Subsection (b) requires the Board of Trustees to recommend annual operating budgets for the National Museum to the Board of Regents; to advise and assist the Board of Regents on all matters relating to the National Museum; to adopt bylaws for themselves; to designate their own chairman and officers from among themselves;' and to report annually to the Board of Regents regarding the National Museum's operations.

Subsection (c) grants, subject to the general policies of the Board of Regents, the Board of Trustees sole authority (1) to dispose of any part of the collections of the National Museum, if the proceeds from the transactions are used for additions to the collections or endowment of the National Museum; (2) to acquire objects and artifacts for the National Museum; and (3) to develop policy, including critieria with regard to research, evaluation, education, and method of display, for the use of the collections of the National Museum.

Subsection (d) grants, subject to the general policies of the Board of Regents, the Board of Trustees with authority (1) to restore, preserve, and maintain the collections of the National Museum; (2) to solicit funds for the National Museum and determine their use; and (3) to approve expenditures from the endowment of the National Museum for purposes related to the Museum.

Subsection (e), paragraph (1) establishes the membership of the initial Board of Trustees. The Board will consist of the Secretary of the Smithsonian Institution, an Assistant Secretary of the Smithsonian Institution appointed by the Board of Regents, 8 individuals appointed by the Board of Regents, and 15 individuals appointed by the Board of Regents from a list of members of the Board of Trustees of the Heye Foundation nominated by the Board of Trustees of the Heye Foundation.

Paragraph (2) requires that at least 7 individuals appointed by the Board of Regents to the Board of Trustees must be Indians, excluding the Secretary and Assistant Secretary of the Smithsonian Institution.

Paragraph (3) provides that the Assistant Secretary of the Smithsonian Institution appointed to serve on the Board of Trustees will serve at the pleasure of the Board of Regents and that the term of office of all other members of the Board of Trustees appointed by the Board of Regents will be 3 years beginning on the date of transfer of the Heye Foundation assets to the Smithsonian Institution.

Paragraph (4) provides that vacancies in the initial Board of Trustees will be filled only for the remainder of the term involved. Vacancies occurring among those appointed by nomination by the Board of Trustees of the Heye Foundation may be filled by the Board without regard to further nominations from the Board of Trustees of the Heye Foundation; but, vacancies that result in there being less than 7 Indians on the Board of Trustees, excluding the Secretary and the Assistant Secretary of the Smithsonian Institution, must be filled by an Indian.

Subsection (f), paragraph (1) provides that upon the expiration of the terms of the initial Board of Trustees appointed under subsection (e), the Board of Trustees will consist of the Secretary of the Smithsonian Institution, an Assistant Secretary of the Smithsonian Institution appointed by the Board of Regents, and 23 individuals appointed by the Board of Regents from a list of nominees recommended by the outgoing Board of Trustees.

Paragraph (2) requires that at least 12 members of the Board of Trustees must be Indians, excluding the Secretary and Assistant Secretary of the Smithsonian Institution.

Paragraph (3) provides that the Assistant Secretary of the Smithsonian Institution appointed to the Board of Trustees will serve at the pleasure of the Board of Regents. The term of office of all other individuals appointed by the Board of Regents to the Board of Trustees will be 3 years except that, of the members first appointed by the Board of Regents under subsection (f)(1)(C), 7 members, of whom 4 must be Indians, will have a term of office of 1 year and 8 members, of whom 4 must be Indians, will have a term of office of 2 years as designated at the time of appointment.

Paragraph (4) provides that vacancies may be filled only for the remainder of the term involved.

Subsection (g) provides that a majority of the Members of the Board of Trustees then in office constitutes a quorum.

Subsection (h) allows for the reimbursement of the Board of Trustees for expenses incurred in the performance of their duties.

Section 6. Director and Staff of the National Museum

Subsection (a) requires the Secretary of the Smithsonian Institution to appoint a Director to manage the National Museum, subject to the policies of the Board of Trustees, and to appoint other employees to serve under the Director.

Subsection (b) requires all employees of the Heye Foundation serving on the day before the day of the transfer of the Heye Foundation assets to the Smithsonian Institution be offered employment with the Smithsonian Institution under the Smithsonian Institution's usual terms of employment. This subsection also requires that each Heye Foundation employee who is offered and accepts employment with the Smithsonian Institution under this subsection must receive a rate of gross pay not less than the amount that

individual was receiving on the day prior to the date of transfer of the Heye Foundation assets.

Subsection (c), paragraph (1) allows the Secretary of the Smithsonian to offer employment to Heye Foundation employees under section 6(b) and to the Director and 2 other employees of the National Museum without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

Paragraph (2) allows the Secretary of the Smithsonian Institution to fix the pay of the Director and 2 employees of the National Museum without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

Paragraph (3) allows the Secretary to fix the pay of employees hired from the Heye Museum in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

Section 7. Museum Facilities

Subsection (a) requires the Board of Regents to plan, design, and construct a facility on the Mall on the block immediately East of the National Air and Space Museum in Washington, D.C., to house the portion of the National Museum to be located in the District of Columbia. The Board of Regents may pay not more than two-thirds of the total cost of planning, designing, and constructing this facility from funds appropriated by the Congress. The remainder of the cost will be paid from non-Federal sources through funds raised by the Smithsonian. These non-Federal funds are to be treated as other gifts received by the Smithsonian, which are not subject to appropriations.

Subsection (b), paragraph (1) allows the Administrator of General Services to lease space in the Old U.S. Custom House at One Bowling Green, New York, New York, to the Smithsonian Institution to house that portion of the National Museum to be located in New York. The lease is subject to any terms mutually agreed upon by the Administrator and the Secretary of the Smithsonian Institution and will be for not less than 99 years. This subsection exempts the Smithsonian Institution from this requirement and allows them to pay a nominal charge, notwithstanding section 210(j) of the Federal Property and Administrative Services Act of 1949.

This subsection also authorizes appropriations to reimburse the Federal Buildings Fund for the difference between the amount actually charged to the Smithsonian Institution and the amount the Smithsonian Institution would otherwise be required to be charged under section 210(j) of the Federal Property and Administrative Services Act of 1949 for the lease of any space and amounts necessary to provide for that reimbursement.

Paragraph (2) requires the Board of Regents to plan, design, and construct a significant facility for the National Museum in the space it leases in the Old U.S. Custom House and requires the Administrator of General Services to plan, design, and construct an auditorium and loading dock in the Old U.S. Custom House for the shared use of all occupants including the National Museum. The National Museum space in the Old U.S. Custom House, together with the auditorium and loading dock, is required to have a total square footage of approximately 82,500 square feet.

Paragraph (3) makes the Board of Regents responsible, after construction, for repairs and alterations in the space the Smithsonian Institution leases in the Old U.S. Custom House.

Paragraph (4) requires the Board of Regents to reimburse the Administrator of General Services for the pro rata share of utilities and other services and for the full cost of any repairs or alterations made by GSA at the request of the Smithsonian Institution with respect to the space leased by the Smithsonian Institution in the Old U.S. Custom House.

Paragraph (5) requires the Board of Regents to pay one-third of the cost of planning, designing, and constructing the National Museum facility in the Old U.S. Custom House. The remainder of the costs are required to be paid from non-Federal sources and, of that remainder, the City of New York and the State of New York will each pay the lesser of one-third of the total costs or $8,000,000. The payments by the City and State of New York will be paid under a schedule mutually agreed upon by the city, the State, and the Board of Regents. Federal funds may not be obligated for actual construction of a National Museum facility in the Old U.S. Custom House in a fiscal year until non-Federal sources have paid the Board of Regents the non-Federal share of the costs estimated to be incurred in that year. These non-Federal funds are to be treated as other gifts received by the Smithsonian, which are not subject to appropriations.

Paragraph (6) names the National Museum facility in the Old U.S. Custom House the "George Gustav Heye Center of the National Museum of the American Indian".

Subsection (c) requires the Board of Regents to plan, design, and construct a conservation and storage facility for the collections of the National Museum at the Museum Support Center of the Smithsonian Institution. The storage facility may be built entirely from appropriated funds, and there is no requirement for contributions from non-Federal sources.

Subsection (d) requires that the National Museum facility on the Mall in Washington, D.C., the Old U.S. Custom House facility in New York, and the Museum Support Center facility have, in the aggregate, a total square footage of at least 400,000 square feet.

Subsection (e) allows the Board of Regents and the Administrator of General Services to enter into any agreements necessary for planning, designing, and constructing the National Museum facility on the Mall in Washington, D.C., the National Museum facilities at the Old U.S. Custom House in New York, New York, except for the loading dock and auditorium, and the National Museum conservation and storage facility at the Museum Support Center of the Smithsonian Institution. Under the agreements, the Board of Regents are required to transfer to the Administrator any amounts necessary for expenses of the General Services Administration with respect to expenses of the General Services Administration with respect to planning, designing, and constructing the facilities.

Subsection (f) provides that, notwithstanding any other provision of this Act, funds appropriated for the planning, designing, and constructing of the National Museum facilities in Washington, D.C., in New York, and at the Museum Support Center of the Smithsonian Institution may not be obligated for actual construc-

tion of any of the above facilities until the 60th day after the date on which the Board of Regents transmits to Congress a written analysis of the total estimated cost of the construction and a cost-sharing plan projecting Federal appropriations and non-Federal contributions for the construction on a fiscal year basis.

Section 8. Custom House Office Space and Auditorium

Subsection (a) requires the Administrator of General Services to make necessary repairs and alterations in the portion of the Old U.S. Custom House that is not leased to the Smithsonian Institution and which, as of the day of enactment of this Act, has not been altered.

Subsection (b) authorizes $25,000,000 to be appropriated to the Administrator of General Services from the Federal Buildings Fund to make any necessary repairs and alterations as described in section 8(a) and to plan, design, and construct an auditorium and loading dock at the Old U.S. Custom House as described in section 7(b)(2)(B).

Section 9. Audubon Terrace

Subsection (a), paragraph (1) requires the Board of Regents to assure that, on the date that a qualified successor to the Heye Foundation at Audubon Terrace first takes possession of Audubon Terrace, an area of at least 2,000 square feet is physically suitable and publicly accessible for exhibition activities.

Paragraph (2) requires the Board of Regents, on written agreement between the Board of Regents and any qualified successor, to lend objects from the collections of the Smithsonian Institution to the successor for exhibition at Audubon Terrace.

Paragraph (3) requires the Board of Regents, on written agreement between the Board of Regents and any qualified succesor, to provide training, scholarship, technical, and other assistance to the successor for exhibition activities at Audubon Terrace. The assistance may not include operating funds for the exhibition facility at Audubon Terrace.

Subsection (b) requires any charge by the Board of Regents for lending objects under section 9(a)(2), or the provision of assistance under section 9(a)(3), to be determined according to the successor's ability.

Subsection (c) defines a "qualified successor to the Heye Foundation at Audubon Terrace", "qualified successor", and "successor" as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, that is exempt from tax under section 501(a) of that Code and that, as determined by the Board of Regents, is a successor occupant to the Heye Foundation at Audubon Terrace, 3753 Broadway, New York, New York; and is qualified to operate a museum type facility; and is committed to make a good faith effort to respond to community cultural interests.

Section 10. Board of Regents Functions with Respect to Certain Agreements and Programs

Subsection (a) requires the Board of Regents to give priority to agreements with appropriate Indian organizations, including Indian tribes, when entering into agreements for the loan of Native

American artifacts and objects, for sponsoring or coordinating traveling exhibitions, or for providing training and technical assistance. It also allows the loans or services to be made at minimal or no cost to Indian organizations.

Subsection (b) allows the Board of Regents to establish programs to serve Indian tribes and communities and, in concert with educational institutions including tribally controlled community colleges, provide programs to enhance the opportunities for Indians in museum studies, management, and research.

Subsection (c) requires the Board of Regents to establish an Indian Museum Management Fellowship Program.

Subsection (d) authorizes the appropriation of $2,000,000 for each fiscal year beginning October 1, 1990, to carry out section 10(b) and section 10(c).

Section 11. Inventory, Identification, and Return of Indian Human Remains and Indian Funerary Objects in the Possession of the Smithsonian Institution

Subsection (a) requires the Secretary of the Smithsonian Institution, on consultation with Indian religious leaders and officials of Indian tribes, to inventory and identify, using the best available evidence, Indian human remains and funerary objections in the possession or control of the Smithsonian Institution.

Subsection (b) requires the Secretary of the Smithsonian Institution to notify the affected Indian tribe when the preponderance of the evidence identifies any human remains or funerary objects as originating from a particular tribe.

Subsection (c) requires, when the preponderance of evidence identifies any Indian human remains in the Smithsonian Institution's possession as being those of a particular individual or of an individual culturally identified with a particular tribe, the Secretary of the Smithsonian Institution to expeditiously return the remains and any associated funerary objects to the appropriate descendants or Indian tribe requesting that they be returned.

Subsection (d) requires, when the preponderance of the evidence identifies any funerary objects in the possession of the Smithsonian not associated with human remains as having been removed from a specific burial site of an individual culturally affiliated with an Indian tribe, the Secretary of the Smithsonian to expeditiously return the objects to that tribe upon its request.

Subsection (e) provides that nothing in this section limits any other authority of the Smithsonian Institution to return Indian human remains or Indian funerary objects in its possession to Indians or Indian tribes. It also provides that nothing in this section requires, causes, or affects the delay of action on any pending tribal request for the return of Indian human remains or Indian funerary objects, denies or affects tribal access to the courts, or limits any other rights Indian tribes or individuals may have with respect to the return of Indian human remains or Indian funerary objects.

Subsection (f) authorizes the appropriation of $1,000,000 for fiscal year 1991, and any amounts that are necessary in succeeding fiscal years to carry out this action.

Section 12. Special Committee to Review the Inventory, Identification, and Return of Indian Human Remains and Indian Funerary Objects

Subsection (a) requires the Secretary of the Smithsonian Institution to, within 120 days after enactment, appoint a special committee to monitor and review the implementation of section 11. The committee is required to ensure the fair and objective consideration of relevant evidence, review findings relating to the origin of Indian human remains or Indian funerary objects, facilitate the resolution of disputes among tribes as to the right of return, and to perform any other duties as the Secretary may assign.

Subsection (b) requires that the committee will consist of 5 members, 3 of whom must be appointed from among nominations submitted by Indian tribes and organizations, and none of whom may be Federal employees or otherwise associated with the Smithsonian Institution. The Secretary is required to appoint one member of the committee as its chairman.

Subsection (c) requires the Secretary of the Smithsonian Institution to ensure that the committee is given full and free access to Indian human remains or Indian funerary objects and to related evidence and documents.

Subsection (d) provides for the pay and expenses of the members of the committee while they are engaged in the business of the committee.

Subsection (e) authorizes the Secretary of the Smithsonian Institution to prescribe regulations for the committee and requires the Secretary to provide necessary administrative support.

Subsection (f) terminates the committee 120 days after certification by the Secretary of the Smithsonian Institution to the Congress that the work of the committee has been completed.

Subsection (g) exempts the committee from the Federal Advisory Committee Act.

Subsection (h) authorizes the appropriation of $250,000 for fiscal year 1991 and any amounts that are necessary in succeeding fiscal years to carry out this action.

Section 13. Grants by the Secretary of the Interior to Assist Indian Tribes with Respect to Agreements for the Return of Indian Human Remains and Indian Funerary Objects

Subsection (a) authorizes the Secretary of the Interior to make grants to Indian tribes to assist the tribes in reaching and implementing agreements with the Smithsonian Institution and other Federal and non-Federal entities for the return of Indian human remains or Indian funerary objects.

Subsection (b) authorizes the appropriation of $1,000,000 for fiscal year 1991 and any amounts that are necessary in succeeding fiscal years to carry out this section.

Section 14. Definitions

Section 14 contains definitions of several terms used in this Act.

Paragraph (1) defines "Board of Regents" to be the Board of Regents of Smithsonian Institution.

Paragraph (2) defines "Board of Trustees" to be the Board of Trustees of the National Museum of the American Indiana.

Paragraph (3) defines "burial site" to be a natural or prepared physical location into which, as part of a death rite or ceremony, individual human remains are deposited. The site may be below, on, or above the surface of the ground.

Paragraph (4) defines "funerary object" to be an object, that as part of a death rite or ceremony, is intentionally placed with individual human remains. The objects may be placed there at the time of burial or later.

Paragraph (5) defines "Heye Foundation assets" to be the collections, endowment, and all other property of the Heye Foundation described in the Memorandum of Understanding between the Smithsonian Institution and the Heye Foundation, dated May 8, 1989, and the schedules attached to that Memorandum. The assets do not include the building at Audubon Terrace in which the collection is currently housed. The deed for that building already provides for its disposition.

Paragraph (6) defines "Heye Museum" to be the Museum of the American Indian, Heye Foundation. This is the current museum.

Paragraph (7) defines "Indian" to be a member of an Indian tribe recognized by the United States Government, including an Alaska Native.

Paragraph (8) defines "Indian tribe" to be a tribe, band, nation, or other organized group or community of Indians recognized by the United States Government, and includes an Alaska Native village.

Paragraph (9) defines "National Museum" to be the National Museum of the American Indian established under section 3.

Paragraph (10) defines "Native American" to be any individual of a tribe, people, or culture that is indigenous to North, Central, or South America, and includes a Native Hawaiian.

Paragraph (11) defines "Native Hawaiian" to be any member or descendant of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

Section 15. Authorization of Appropriations

Subsection (a) authorizes the appropriation to the Board of Regents of $10,000,000 in fiscal year 1990 and any amounts that may be necessary in succeeding fiscal years to carry out this Act excepting section 7(b)(1)(B), relating to authorizations to Federal Buildings Fund; section 7(b)(2)(B), relating to the loading dock and auditorium of the old U.S. Custom House; section 8, relating to repairs and alterations in the portion of the old U.S. Custom House not occupied by the National Museum; section 10, relating to agreements between the Board Regents and Indian organizations for the loan of objects and the provision of training; section 11, relating to the inventory, identification and return of Indian human remains and Indian funerary objects; section 12, relating the repatriation review committee; and section 13, relating to the Secretary of Interior's grants to Indian tribes to implement repatriation agreements, for which authorizations for appropriations have previously been made in the legislation.

Subsection (b) allows funds appropriated under section 15(a) to remain available without fiscal year limitation for the period prior to the availability of the new facilities of the National Museum for administrative and planning expenses and for the care and custody of the collections of the National Museum. This subsection is modeled on Article Second B(10) of the Memorandum of Understanding between the Smithsonian and the Museum of the American Indian, Heye Foundation. It is included to allow the Smithsonian to carry over appropriated funds for the care and custody of the collections that will be used in the new museum and for the administration and planning expenses that will precede the new museum's construction.

COMPLIANCE WITH RULE XI

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(1) The legislative discussed in this report reflects the testimony obtained by the Committee during a hearing on July 20, 1989.

(2) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation since it does not provide new budget authority or new or increased tax expenditures.

(3) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at under clause 4(C)(2) of rule X of the Rules of the House of Representatives.

(4) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of the costs for H.R. 2668 under section 403 of the Congressional Budget Act of 1974. The submission is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 2, 1989.

Hon. GLENN M. ANDERSON,
Chairman, Committee on Public Works and Transportation,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 6228, the National Museum of the American Indian Act, as ordered reported by the Committee on House Administration on October 18, 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2688.
2. Bill title: National Museum of the American Indian Act.
3. Bill status: As ordered reported from the Committee on House Administration on October 18, 1989.

4. Bill purpose: The purpose of this bill is to establish within the Smithsonian Institution a museum to be known as the National Museum of the American Indian. The Museum, which is to consist of three facilities, would permanently house the collection of the Heye Foundation's Museum of the American Indian currently located in New York City. The main museum would be constructed on the National Mall in Washington, D.C., and a second facility, the Old United States Customs House in New York City, has been chosen as the site for the exhibition of the remainder of the collection. The third facility authorized by the bill would be located at the Smithsonian's Museum Support Center in Suitland, Maryland. It would serve to store and conserve the collections of the Museum. According to the legislation, the size of the three facilities combined must total at least 400 thousand square feet. This bill requires subsequent appropriations.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Startup:					
Authorization level	10	10	11	11	12
Estimated outlays	9	10	11	11	12
Mall Museum: Planning, design, and construction:					
Estimated authorization level	0	56	0	0	0
Estimated outlays	0	14	27	10	5
Mall Museum: Operation:					
Estimated authorization level	0	0	0	0	9
Estimated outlays	0	0	0	0	8
U.S. Customs House: Museum construction:					
Estimated authorization level	0	9	0	0	0
Estimated outlays	0	*	1	4	4
U.S. Customs House: Renovation:					
authorization level	0	25	0	0	0
Estimated outlays	0	1	2	10	11
U.S. Customs House: Operation					
Estimated authorization level	0	0	0	0	6
Estimated outlays	0	0	0	0	5
U.S. Customs House: User fee collection:					
Estimated authorization level	0	0	0	0	−3
Estimated outlays	0	0	0	0	−3
Audubon Terrace: Assistance to the successor of the Heye Foundation:					
Estimated authorization level	0	(1)	(1)	(1)	(1)
Estimated outlays	0	(1)	(1)	(1)	(1)
Museum Support Center Facility: Planning, design, and construction:					
Estimated authorization level	0	44	0	0	0
Estimated outlays	0	11	22	7	4
Museum Support Center Facility: Opeation:					
Estimated authorization level	0	0	0	0	1
Estimated outlays	0	0	0	0	1
Museum Indian programs:					
Authorization level	0	2	2	2	2
Estimated outlays	0	0	1	2	2
Identification, inventory, and return of Indian remains:					
Authorization level	0	1	1	1	1
Estimated outlays	0	1	1	1	1
Special committee:					
Authorization level	0	(1)	(1)	(1)	(1)
Estimated outlays	0	(1)	(1)	(1)	(1)

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Secretary of the Interior grants for assistance to Indian tribes and organizations:					
Authorization level	0	1	1	1	1
Estimated outlays	0	1	1	1	1
Bill Total:					
Estimated authorization level	10	149	16	16	34
Estimated outlays	9	40	66	47	55

[1] Less than $500,000.

Note.—Details in table may not add to totals due to rounding.

The costs of this bill fall within Function 500.

Basis of estimate: H.R. 2668, the National Museum of the American Indian Act, would authorize the Smithsonian Institution to construct on the National Mall a museum to house a portion of the collection of the Heye Foundation's Museum of the American Indian currently located in New York City. The Mall museum is to be one of the three facilities collectively known as the National Museum of the American Indian. A second facility, to be located in New York City at the Old United States Customs House, would allow part of the Heye Foundation collection to remain in New York. A third facility for the conservation and storage of the Museum's collections would be established at the Smithsonian's Museum Support Center in Suitland, Maryland. According to the bill, the Customs House facility must be roughly 82,500 square feet while the three facilities together must total at least 400,000 square feet.

Start Up Costs.—The authorization level for fiscal year (FY) 1990 is specified at $10 million while such sums as may be necessary are authorized for the succeeding fiscal years. The funds authorized for FY 1990 would basically cover the "start up" costs of the project, which according to the Smithsonian, would continue for roughly 6 years, and would cover expenses such as overall project planning, coordination, and administration; initial construction planning and design; care and custody of the collection until the facilities are completed; salaries and benefits for the current Heye Foundation staff whose employment will be transferred to the Smithsonian, and expenses for the Museum's Board of Trustees. Once the facilities are completed, the employee salaries and expenses would become a part of each individual facility's operating cost. Outlay estimates reflect the current spending patterns of other similar Smithsonian programs.

Description of Facilities.—H.R. 2668 authorizes the building of a museum consisting of three facilities totaling at least 400,000 square feet of space. Whether construction will take place of three modest facilities totaling exactly 400,000 square feet, three elaborate state-of-the-art facilities whose combined total space is much greater than 400,000 square feet, or something in between is unknown.

In developing this estimate, we have assumed that the three facilities would open in FY 1994 and that their aggregate space would total 400,000 square feet. Because the New York City Customs House facility is required to be approximately 82,500 square

feet, the Mall museum and the storage facility combined would total 317,500 square feet. According to the Smithsonian, the storage facility in Suitland, MD would consist of a "pod" and associated laboratory space. The "pod" is basically a three story building where museum collections are stored while the lab space is used for curatorial purposes. An existing "pod" and lab space at the Suitland, MD site together currently cover about 77,000 square feet. In this estimate, we have assumed that a "pod" and associated lab space similar to those in existence would be built for the Heye Foundation collection. Assuming that the storage facility would be 77,000 square feet, the size of the Mall facility would then be roughly 240,000 square feet.

Mall Museum.—CBO derived the fiscal year 1991 estimated authorization level for the planning, design and construction costs of the Mall facility as follows. Primarily, the estimated costs were modeled after the planning, design, and construction costs of the Smithsonian's Hirshorn museum. Use of an analogue is necessary because no detailed specifications exist for the Mall facility. The Hirshorn is approximately 176,000 square feet and cost roughly $15 million to build in 1968. Assuming the Mall facility would be about 240,000 square feet, its size would be roughly one-third larger than that of the Hirshorn's. The FY 1991 total planning, design, and construction costs of the Mall facility is an estimated $84 million. This figure was derived by adjusting the 1968 cost figure for the Hirshorn for the size difference and for inflation. The $84 million estimate is uncertain because of inherent problems with historical indexes of construction costs and because the cost of the Mall facility will be influenced by its final specifications. Acccording to H.R. 2668, the federal government would fund two-thirds of the total cost with the remainder funded through private contributions and other non-federal sources. The estimated authorization level for FY 1991 is therefore $56 million. Outlays for the planning, design, and construction estimate reflect the spending patterns of similar construction projects currently funded by the federal government.

To check the above estimate, an alternative figure was derived from the planning, design, and construction costs of the Winterthur Museum currently under construction outside Wilmington, Delaware. The Winterthur is a reasonable analogue for this purpose because it is a current project and unlike must museums currently being built, it will exhibit antiques that will require a climate control system. (CBO believes that a climate control system is likely to be installed in the Mall Museum.)

The Winterthur is estimated to cost $265 per square foot in 1989 dollars. Assuming the Mall facility would be about 240,000 square feet, the estimated total cost would be between $80 million and $90 million. This cost range was derived by adjusting the Winterthur per square foot figure for projected inflation, Smithsonian physical standards, and the higher cost of construction in the District of Columbia in comparison to an area bordering Wilmington, Delaware. The $84 million figure used for this estimate falls within this range.

Fiscal year operating costs for the Mall facility were derived similarly to the planning, design, and construction cost estimate. The FY 1989 operating costs for the Hirshorn were increased by

one-third and were adjusted for projected inflation. Outlays reflect the current spending patterns of the operating costs of other similar programs within the Smithsonian Insitution.

U.S. Customs House.—The Old United States Customs House in New York City is currently owned by the General Services Administration (GSA). According to the legislation, GSA would be authorized to furnish to the Smithsonian at a nominal charge, 82,500 square feet of space in the Customs House facility for the purpose of establishing an exhibit displaying a portion of the Heye Foundation Collection. H.R. 2668 would authorize the appropriation of funds to GSA to cover the difference between the nominal rent charged to the Smithsonian and the rent GSA otherwise would be able to charge. GSA estimates the market rent for this space to be $2 million per year, beginning in fiscal year 1993 when it would be ready for occupancy. This appropriation would reimburse GSA and would have no net budget impact.

The Smithsonian would then be authorized to renovate the existing ground floor at a total cost estimated by the Smithsonian of $25 million. The bill stipulates that the City of New York and the State of New York will each contribute one-third of the total cost up to $8 million, with the Board of Regents providing the remaining $9 million. In addition, the bill authorizes $25 million for the GSA to carry out repairs and alterations in the portion of the U.S. Customs House not leased by the Smithsonian and to construct an auditorium and loading dock within the facility for shared use by all occupants of the museum, including the National Museum. The Smithsonian also would assume full responsibility for its share of the building operating costs. Outlay estimates reflect the spending patterns of other similar activities conducted by the GSA.

As noted above, the Smithsonian would be required to pay its share of the building operating costs in addition to the program operating costs of the exhibits. Because GSA is currently operating the building, no additional cost to the federal government would be incurred if the Smithsonian were to move in. The Smithsonian, however, would incur some program operating costs associated with displaying the exhibits. The Smithsonian estimates that this cost would total $4.6 million if the exhibits were to open in FY 1989. This estimate, however, assumes that the exhibits would open in FY 1994. As a result, the FY 1994 estimated authorization level is the Smithsonian's FY 1989 estimate adjusted for projected inflation. Estimated outlays reflect the current spending patterns of the operating costs of other similar Smithsonian programs.

It is not certain what the Smithsonian will charge for admission or that a fee will be charged at all. Based on a number of assumptions, though, and on information from the Heye Foundation, a rough estimate has been derived for admission fee collections. According to the Heye Foundation, a fee of $2.50 for students and senior citizens, $1.50 for student tours, and $5.00 for adults could be charged in FY 1994. No fee would be charged for American Indians visiting the exhibits. Based on historical experience, CBO expects that 20 percent of the visitors would be either students of senior citizens, 40 percent would be student tours, and 30 percent would be adults. American Indians would comprise 10 percent of

the total visitors. Under these assumptions, the Smithsonian would collect roughly $2.6 million in admission fees in FY 1994.

Audubon Terrace.—The bill stipulates that when a qualified successor to the Heye Foundation takes possession of the Audubon Terrace, 3753 Broadway, New York, New York, 2,000 square feet of the facility would be accessible to the public and suitable for museum exhibits. The Smithsonian Institution would lend objects and provide assistance to the successor at a charge determined according to the ability of the successor to pay. At this time, the future of the Audubon Terrace is unsure because the Heye Foundation Trustees do not have ownership of the building. The owners may lease the building or use it for other purposes. We assume in this estimate that the owners choose to lease the space to what H.R. 2668 specifies as a qualified successor. In this instance, the Smithsonian would be required, in FY 1991, to upgrade the physical standards of the Audubon Terrace at what is estimated by the Smithsonian as a minimal cost to the federal government. The Smithsonian would additionally be required to enter into agreements with the successor to provide assistance and lend exhibit objects, a practice that would be a part of the Heye Museum's operating costs and are included elsewhere in this estimate. Under the above stated assumptions, the costs to the federal government would be minimal.

Museum Support Center.—The FY 1991 estimated authorization for the planning, design, and construction of the Museum Support Center facility is based on the planning, design, and construction costs of the Smithsonian's existing storage facilities. Four storage "pods" and a laboratory facility currently exist at the Suitland, MD site. The Smithsonian estimates the total cost of a new pod at this same site to be approximately $44 million in FY 1991. Estimates outlays reflect the current spending patterns of similar construction projects currently funded by the federal government. Estimates of the operating costs for the new "pod" and associated lab space are based on the current operating costs of the existing Support Center. FY 1989 operating costs for the four pods and lab facility total $4.4 million. It therefore costs approximately $1.1 million to operate one pod and its associated lab space in FY 1989. The FY 1994 estimated authorization level was derived by adjusting the $1.1 million FY 1989 figure for projected inflation. Estimated outlays reflect the current spending patterns of the operating costs of other similar Smithsonian programs.

Museum Indian Programs.—H.R. 2668 authorizes $2 million each fiscal year beginning in FY 1991 to establish programs to serve the American Indian population, to enhance Indians' opportunities in museum studies, management and research, and to establish an Indian museum management fellowship program. The bill also gives priority to Indian organizations when entering into agreements with museums and other organizations. These agreements would result in no additional cost to the federal government in that such priorities will be incorporated into the Museum's operating costs. The outlays reflect the current spending patterns of other similar programs within the Smithsonian Institution.

Indian Human Remains and Funerary Objects.—The bill also authorizes $1 million for FY 1991 and such sums as may be necessary

for the succeeding fiscal years for the identification and inventory of the approximately 18,000 American Indian remains now in the possession of the Smithsonian Institution, notification of any affected tribes, and the return of remains and funerary objects. The Smithsonian estimates this process will take about five years. The outlays reflect the current spending patterns of other similar programs within the Smithsonian Institution.

The bill requires the Secretary of the Smithsonian Institution to appoint a special committee to monitor and review the inventory, identification, and return of Indian human remains and funerary objects. The committee would consist of five members and we assume would cease to exist at the end of FY 1995 once all the Indian human remains are properly analyzed and returned. For FY 1991, $0.25 million is authorized and such sums as may be necessary for succeeding fiscal years. The outlays reflect the current spending patterns of other similar programs within the Smithsonian Institution.

The bill also authorizes $1 million for FY 1991, and such sums as may be necessary for succeeding fiscal years, for the Secretary of the Interior to make grants to Indian tribes to assist them with respect to agreements for the return of Indian human remains and Indian funerary objects. As noted above, the Smithsonian estimates that these funds will be necessary until the end of FY 1995. The outlays reflect the current spending patterns of other similar programs within the Smithsonian Institute

6. Estimated cost to State and local government: H.R. 2668 authorizes the Administrator of General Services to furnish at a nominal charge to the Smithsonian Institution, for a period of not less than 99 years, space in the Old United States Customs House in New York City. Due to its larger size, the Customs House has been chosen as the site to display the portion of the Heye Foundation collection remaining in New York. According to the bill, the City of New York and the State of New York would each guarantee one-third or up to $8 million each for renovation costs as a result of the Smithsonian's occupancy of the Customs House facility.

7. Estimate comparison: The Smithsonian Institution has analyzed the cost impact of the federal government of H.R. 2668, as ordered reported from the Committee on House Administration on October 18, 1989 in a testimony given by Robert McCormick Adams before the House Committee on Interior and Insular Affairs, the House Committee on House Administration, and the House Committee on Public Works and Transportation on July 20, 1989. According to the Smithsonian's estimate, planning, design, and construction costs of the three museum facilities are likely to total approximately $175 million.

The Smithsonian Institution has estimated the total cost of the planning, design and construction of the Mall museum facility at $106 million, with the cost to the federal government at approximately $71 million (two-thirds the total cost). Because of the lack of specific information supporting this estimate, CBO is unable to describe the differences, between its estimate and the Smithsonian's.

8. Previous CBO estimate: On June 10, 1989, CBO provided the Senate Select Committee on Indian Affairs with an estimate of the

S. 978, The National American Indian Museum Act. There are a number of differences between S. 978 and H.R. 2668.

9. Estimate prepared by: Alice Grant.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Under (1)(l)(4) of rule XI of the rules of House of Representatives, the Committee estimates that enactment of H.R. 2668, as amended, would have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives require a statement of the estimated costs to the United States Government that would be incurred in carrying out H.R. 2668, as amended, in fiscal year 1990 and each of the following 5 years. However, under clause 7(d), the provisions of paragraph (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMMITTEE ACTION VOTE

In compliance with rule XI clause 2(l)(2)(B), the Committee reported favorably the bill H.R. 2668, as amended, by voice vote.

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